

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Inquiry Required by the Satellite)	MB Docket No. 05-28
Home Viewer Extension and)	
Reauthorization Act on Rules Affecting)	
Competition in the Television Marketplace)	

**COMMENTS OF
THE SATELLITE BROADCASTING
AND COMMUNICATIONS ASSOCIATION**

The Satellite Broadcasting and Communications Association (the “SBCA” or “Association”) is the national trade association representing various entities that are engaged in the delivery of television, radio and broadband services directly to consumers via satellite. The Association’s members include C-Band and Direct Broadcast Satellite (“DBS”) carriers and distributors; programming services that offer entertainment, news and sports to consumers over satellite platforms; satellite equipment manufacturers and distributors; and satellite dealers and retail firms that sell systems directly in the consumer marketplace. The SBCA hereby offers the following initial comment in the above-captioned proceeding.

Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”)¹ requires the Commission to conduct an inquiry regarding the impact of certain Communications Act provisions and FCC implementing regulations on competition in the multichannel video programming distribution (“MVPD”) market. Specifically, Congress has mandated that the Commission assess the operation of its retransmission consent rules; network program nonduplication rules; syndicated program exclusivity rules; and sports blackout rules,

¹ The Satellite Home Viewer Extension and Reauthorization Act, Pub. L. No. 108-447; 118 Stat. 2809 (2004).

and to gauge these rules' impact on MVPD competition, including on the ability of rural cable operators to compete with DBS providers in the provision of digital broadcast television signals to consumers.² Congress has also invited the Commission to provide recommendations for prospective legislative change, as appropriate.³

As the Commission conducts this inquiry, SBCA wishes to make an important threshold point about all of these requirements. Congress has attempted over the last decade to place satellite carriers on a more equal competitive footing with incumbent cable operators, while taking into account the different regimes governing satellite and cable distributors and trying to calibrate the differences between these two regimes. For example, while satellite carriers are subject to a narrower set of nonduplication restrictions than cable operators, they are subject to the altogether more onerous "unserved household" restriction contained in the satellite carrier compulsory copyright license governing the importation of distant network broadcast signals.⁴ Congress and the Commission also have "tak[en] into consideration that the operational structures" of these two types of MVPDs "are very different."⁵ These differences include the nationwide character of satellite carriers' distribution networks (as opposed to the more localized distribution networks used by cable operators), as well as a market structure in which satellite operators, despite their growing national MVPD market shares, collectively lag behind incumbent cable operators in practically every franchise area. Thus, Congress has imposed

² See *Public Notice*, Media Bureau Seeks Comment for Inquiry Required by the Satellite Home Viewer Extension and Reauthorization Act on Rules Affecting Competition in the Television Marketplace, MB Docket No. 05-28, DA 05-169 (rel. Jan. 25, 2005) ("Public Notice").

³ SHVERA, § 208(a).

⁴ See 47 U.S.C. § 119(a)(2).

⁵ In the Matter of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals, CS Docket No. 00-2, *Report and Order* (Nov. 2, 2000) ("SHVIA Exclusivity Rules Order"), at ¶ 5.

retransmission consent requirements and exclusivity rules that are similar in kind and operation to those applicable to cable operators, but also has sought to tailor them, through Commission implementation proceedings, to the unique aspects of satellite carriage.

The Commission's general approach of refusing to blindly impose nominal parity between DBS and cable operators⁶ at the expense of overall parity -- an outcome frequently sought to be foisted upon DBS providers by cable incumbents -- has been an important reason why DBS operators have been able to provide the most significant competition yet available to cable operators.⁷ Of course, much more remains to be done to curb the dominance of cable operators. Thus, as the Commission evaluates the record in this proceeding, its recommendations to Congress, if any, should be wary of efforts by cable operators to cement their market position by placing regulatory burdens on their primary competitors.

⁶ The Commission's rules thus account for the "practical differences" between the satellite and cable industries and "the different delivery systems they employ." *SHVIA Exclusivity Rules Order* at ¶ 22.

⁷ In the Matter of Annual Assessment of Competition in the Market for the Delivery of Video Programming, *Eleventh Annual Report*, MB Docket No. 04-227 (rel. Feb. 4, 2005), at ¶ 10.

Respectfully submitted,

**THE SATELLITE BROADCASTING
AND COMMUNICATIONS
ASSOCIATION.**

By: -/s/-

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